



The State of New Hampshire  
**Department of Environmental Services**



**Michael P. Nolin**  
Commissioner  
December 31, 2003

Cumberland Farms Inc.  
ATTN: Richard Etzold  
777 Dedham Street  
Canton, MA 02021

**NOTICE OF NON-COMPLIANCE and  
PERMIT REVOCATION – NCPR # 03-035**

RE: SALEM, CUMBERLAND FARMS 2803, EXISTING UNDERGROUND STORAGE TANK FACILITY (UST #M-0111498) (DES #199511005)

Dear Mr. Etzold:

The New Hampshire Department of Environmental Services ("DES") is hereby notifying you that the above-referenced facility, located at 384 South Broadway, Salem, NH is not in compliance with New Hampshire Code of Administrative Rules Env-Wm 1401, regulating Underground Storage Facilities. On September 23, 2003 a DES inspector conducted a compliance audit at the facility. A written document, describing the deficiencies was provided to the facility representative. This document required the facility be returned to compliance within 45 days, and DES be notified of the corrective measures taken. Compliance has not been achieved. **Failure to achieve compliance with the following deficiencies within 90 days from the date of this Notice of Non-Compliance and Permit Revocation ("Notice") will result in revocation of your Permit-to-Operate on March 30, 2004. This letter contains important compliance and procedural information. Please read it carefully.**

Env-Wm 1401.21 Tank Standards for New Underground Storage Systems

Env-Wm 1401.21 requires a UST system completed certificate be permanently affixed and visible to the division inspector at the facility premises for all new UST systems. The division inspector could not document a certificate posting. A certificate shall be posted at the facility and verification in writing that the certificate has been posted shall be provided to DES.

2. Env-Wm 1401.25 Spill Containment and Overfill Protection

Env-Wm 1401.25 requires spill containment devices be installed and maintained in good working order on all UST systems. DES has determined that the required spill containment device was not maintained in good working order. Documentation shall be provided to DES that the spill containment device has been repaired or cleaned to enable the device to collect and hold a minimum 5-gallon spill during a product delivery.

Env-Wm 1401.25 Spill Containment and Overfill Protection

Env-Wm 1401.25 requires overfill protection devices be installed and maintained in good working order on all UST systems. DES has determined that the overfill protection device was not installed at the required 90% alert or 95% shut off level. The overfill protection device shall be installed at the required 90% alert or 95% shut off level. Verification shall be provided to DES that the overfill protection device has been installed at the required 90% alert or 95% shut off level.

4 Env-Wm 1401.26 Leak Monitoring for New Tanks and Env-Wm 1401.31 Operation of Leak Monitoring Equipment

Env-Wm 1401.26 and/or Env-Wm 1401.31 require that a leak monitor for double-wall tank systems continuously operate. The leak monitoring equipment and devices shall be tested annually for proper operation in accordance with manufacturer's requirements. DES has determined that the leak monitor for the tank system was not continuously performing. Leak monitor replacement or maintenance results shall be provided to DES.

5 Env-Wm 1401.31 Operation of Leak Monitoring Equipment

Env-Wm 1401.31 requires test records be maintained for interstitial monitor and release detection records. DES has determined that the annual test documentation was not available for the tank leak monitoring equipment and devices. The annual test documentation for the tank leak monitoring equipment and devices shall be provided to DES.

6. Env-Wm 1401.27 Leak Monitoring for New Underground Piping Systems and Env-Wm 1401.31 Operation of Leak Monitoring Equipment

Env-Wm 1401.27 and/or Env-Wm 1401.31 require leak monitoring for piping to be installed and continuously operate. DES has determined that the leak monitor for piping was not continuously operating. The leak monitor replacement or maintenance records or notification that the DES that the tank system is temporarily closed.

Env-Wm 1401.31 Operation of Leak Monitoring Equipment

Env-Wm 1401.31 requires test records be maintained for the monitoring testing of the piping and release detection records for the piping. DES has determined that the annual test documentation was not available for the piping leak monitoring equipment and devices. The annual test documentation for the piping leak monitoring equipment and devices shall be provided to DES.

In addition, Env-Wm 1401.10(a) requires owners of underground storage facilities for oil to maintain financial responsibility for costs associated with cleanup of releases from systems, the implementation of corrective measures, and compensation for third party damages in the amount equal to or greater than \$1,000,000 per occurrence. Env-Wm 1401.10(c) provides that the financial responsibility requirement may be satisfied if the owner is eligible for reimbursement of costs associated with cleanup of releases from the Oil Discharge and Disposal Cleanup Fund ("the Fund"). Eligibility for the Fund is contingent upon achieving and maintaining compliance with statutory (RSA 146-C) and regulatory (Env-Wm 1401) requirement. This facility has not maintained compliance, consequently, should your permit be revoked the Fund will not be available to you as a financial responsibility mechanism for subsequent releases. At such time as the deficiencies listed in this Notice have been resolved and your facility has been deemed in compliance with RSA 146-C and Env-Wm 1401, you may again use the Fund as your financial assurance mechanism for future releases.

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In accordance with RSA 146-C:4 and Env-Wm 1401.07(a), no person shall own or operate an underground storage facility without a permit issued by DES. Within 30 days from the date of the permit revocation the facility shall be closed in accordance with Env-Wm 1401.18 for permanent closure.

Based on the compliance deficiencies described above, DES believes this facility poses a potential substantial threat to the surface and groundwater of the state. Therefore, in accordance with RSA 146-C:4 and Env-Wm 1401.09, if compliance, as requested above, is not achieved within ninety (90) days of the date of this Notice your Permit-to-Operate (UST Permit #0111498) shall be revoked effective **March 30, 2004**. Within thirty (30) days of the date of permit revocation all regulated substances must be removed from the UST systems at this facility. If the facility achieves compliance during the ninety (90) day period, it is necessary that documentation be submitted to DES verifying that compliance has been attained.

You have the right to a hearing to contest these allegations before the proposed license action is taken. The hearing would be a formal adjudicative proceeding pursuant to RSA 541-A:31, at which you and any witnesses you may call would have the opportunity to present testimony and evidence as to why the proposed action should not be taken. All testimony at the hearing would be under oath and would be subject to cross-examination. If you wish to have a hearing, one will be scheduled promptly.

RSA 541-A:31 III(e) provides that you have the right to have an attorney present to represent yourself at your own expense. If the Permit is an occupational license, under RSA 541-A:31, III(f) you have the right to request DES to provide a certified shorthand court reporter at your own expense. **Such request must be submitted in writing at least 10 days prior to the proceeding.**

You may waive your right to a hearing. If you waive the hearing, DES is prepared to proceed with the actions as stated above. You should notify DES of your decision by filling out and returning the enclosed form.

If there are any questions concerning the above, I may be contacted at the Waste Management Division at (603) 271-1165.

Sincerely,

  
**COPY**

Lynn A. Woodard, P.E.  
Supervisor  
Oil Compliance and Initial Response Section

CERTIFIED MAIL # 7000 1670 0000 0585 2016

cc: Michael P. Nolin, Commissioner  
Mark Harbaugh, DES Legal Unit  
Fred McGarry, P.E., Chief Engineer, WMD  
George Lombardo, P.E., WMD  
Tom Beaulieu, WMD  
Health Officer, Town of Salem